THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No. 6377 of 2005

% 21-09-2007

Smt. Padur Megamma w/o late Padur Anthaiah, aged about 62 years, R/o S.V. Residence Flat No. 101, Plot No. 67, Snehanagar Colony, Street No. 8, Habsiguda, Hyderabad.

.. Petitioner

Vs.

$ The Government of India, Ministry of Home Affairs, rep. By its Under Secretary, Loknayak Bhawan, Khan Market, New Delhi.

.... RESPONDENT

!Counsel for the Appellants: Sri P. Gangarami Reddy

Counsel for Respondent: Sri A. Rajasekhar Reddy,
Asst. Solicitor General.

<Gist :

>Head Note:

? Cases referred:

JT 1993 (3) SC 342

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O R D E R

This Court issued Rule Nisi on 25-03-2005. Counter affidavit was filed on 11-09-2007.

2. Heard Sri P. Gangarami Reddy, learned counsel representing the petitioner and learned Assistant Solicitor General representing the respondent.

3. The writ petition is filed for a Writ of Mandamus or any other appropriate Writ or direction declaring the action of the respondent in not granting the pension from the date of the Scheme, 1980 to the petitioner as illegal, arbitrary and contrary to the judgments of the Hon'ble Supreme Court and consequently direct the respondent to grant pension with effect from the date of the Scheme or at least from the date of filing of Writ Petition No. 1740 of 1995 and pay the arrears from the date of grant and pass such other or further orders.

4. It is stated by the writ-petitioner that she filed W.P. No. 1740 of 1995 claiming freedom fighter pension under Swatantra Sainik Samman Pension Scheme, 1980 and this Court, by an order dated 25-03-2004, directed the respondent to consider the claims positively and pass orders granting pension and after filing Contempt Case No. 1636 of 2004, the respondent had sanctioned pension with effect from 25-03-2004. It is stated that the respondent has to sanction the pension from the date of the Scheme. It is also stated that the husband of the petitioner made an application for grant of the pension under Central Freedom Fighters Pension Rules, 1972 and the same was rejected vide File No. 12/1514/76-FF(VI). Later on, the Central Government introduced Swatantra Sainik Samman Pension Scheme in the year 1980. Since the respondent failed to grant the pension under the Scheme 1980, after the death of husband of the petitioner, the petitioner filed W.P. No. 1740 of 1995 and the same was allowed on 25-03-2004. It is also stated that, in pursuance of the directions of this Court, the respondent had granted the pension under the Scheme, 1980. It is also stated that during the life time of her husband and after his death, the petitioner has been requesting the respondent to sanction pension. The petitioner filed a writ petition in the year 1995 claiming pension. The respondent has to sanction pension with effect from the date of the Scheme or at least from the date of filing the writ petition before this Court. But, however, the respondent had sanctioned pension from the date of the order in W.P. No. 1740 of 1995. It is also stated that there is no justification in granting the pension from 25-03-2004 only. Hence, the action of the respondent in not sanctioning the pension with effect from the date of the Scheme or from the date of filing of the writ petition at least had been called in question in the present writ petition.

5. A counter affidavit is filed, wherein the filing of W.P. No. 1740 of 1995 was admitted in para-3 of the counter affidavit. Further, a specific stand is taken that it is brought to the notice of the Court that earlier file of late husband of the petitioner was not readily traceable in the available records. It is further stated that vide its order dated 25-03-2004 in W.P. No. 1740 of 1995 this Hon'ble Court directed the petitioner to send a copy of fresh application to the Central Government along with the order of the State Government sanctioning pension to her late husband and later to her and this respondent was directed to pass appropriate order within a period of three months from the date of receipt of a copy of the order. It is also further stated that the application of the petitioner was received by this respondent on 28-05-2004 and the same was examined and the Government of Andhra Pradesh was requested on 15-06-2004 to verify the genuineness of the Jail Certificate furnished by the petitioner as well to indicate whether the jail suffering of her husband was in connection with freedom movement. The State Government was again reminded on 12-01-2005 to expedite its verification report. On receipt of the State Government's verification report dated 22-01-2005, the case of the petitioner was considered and family pension was sanctioned to her. It was decided to sanction her pension not from the date of receipt of her application i.e. 28-05-2004 or date of receipt of verification report of the State Government i.e. 24-01-2005, but from a previous date i.e. 25-03-2004 i.e. the date of orders of the Hon'ble High Court in W.P. No. 1740 of 1995 and as such the petitioner is not entitled for ante-dating of her family pension from a back date. It is further stated that the Hon'ble Apex Court in case of *Union of India and others V. Ram Jeevan Singh and others* vide its judgment dated 14-11-1994 in petitions or Special Leave to Appeal (Civil No.

(s)./94 CC 27667 (From the judgment and Order dated 10-12-1993 of the High Court of Patna in C.JC.No.7123/93) has held as follows:-

> "The only question is from what date the respondent is entitled to the payment of pension. Admittedly, on two occasions his claim was rejected. On the third occasion an application was made on 19-08-1991 and pension was granted thereon. Therefore, when the High Court has stated that the respondent is entitled from the date of the application obviously, it would be 19-08-1991."

It is further stated that as the claim of the petitioner's husband was rejected earlier and was considered on the basis of her fresh application in compliance with the directions of this Court, her case is fully covered by the judgment of the Apex Court as specified supra.

6. In the light of their respective stands taken by the parties the writ-petitioner in the affidavit filed in support of the petition and respondent in the counter-affidavit, the question to be considered is whether the writ-petitioner is entitled to the reliefs prayed for in the present writ petition?

7. Strong reliance was placed in **MUKUND LAL BHANDARI AND OTHERS V. UNION OF INDIA AND OTHERS**[1] wherein the Apex Court at paras 6 to 11 observed thus:

> "As regards the sufficiency of the proof, the Scheme itself mentions the documents which are required to be produced before the Government. It is not possible for this Court to scrutinize the documents which according to the petitioners, they had produced in support of their claim and pronounce upon their genuineness. It is the function of the Government to do so. We would, therefore, direct accordingly.
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> As regards the contention that the petitioners had filed their applications after the date prescribed in that behalf, we are afraid that the Government stand is not justifiable. It is common knowledge that those who participated in the freedom struggle either at the national level or in the erstwhile Nizam State, are scattered all over the country and most of them may even be inhabiting the remotest parts of the rural areas. What is more, almost all of them must have now grown pretty old, if they are alive. Where the freedom fighters are not alive and their widows and the unmarried daughters have to prefer claims, the position may still be worse with regard to their knowledge of the prescribed date. What is more, if the Scheme has been introduced with the genuine desire to assist and honour those who had given the best part of their life for the country, it ill-behoves the Government to raise pleas of limitation against such claims. In fact, the Government, if it is possible for them to do so, should find out the freedom fighters or their dependents and approach them with the pension instead of requiring them to make applications for the same. That would be the true spirit of working out such Schemes. The Scheme has rightly been renamed in 1985 as the Swatantra Sainik Sammam Pension Scheme to accord with its object. We, therefore, cannot countenance the plea of the Government that the claimants would only be entitled to the benefit of the Scheme if they made applications before a particular date notwithstanding that in fact they had suffered the imprisonment and made the sacrifices and were thus otherwise qualified to receive the benefit. We are, therefore, of the view that whatever the date on which the claimants make the applications, the benefit should be made available to them. The date prescribed in any past or future notice inviting the claims, should be regarded more as a matter of administrative convenience than as a rigid time-limit.
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> Coming now to the last contention advanced on behalf of the Government, viz., that the benefit of the Scheme should be extended only from the date the claimant produces the required proof of his eligibility to the pension, we are of the view that this contention can be accepted only partially. There have been cases, as in the present case, where some of the claimants had made their applications but either without the necessary documentary proof or with insufficient proof. It is unreasonable to expect

that the freedom fighters and their dependents, would be readily in possession of the required documents. In the very nature of things, such documents have to be secured either from the jail records or from persons who have been named in the Scheme to certify the eligibility. Thus, the claimants have to rely upon third parties. The records are also quite old. They are bound to take their own time to be available. It is, therefore, unrealistic to expect that the claimants would be in a position to produce documents within a fixed time limit. What is necessar4y in matters of such claims is to ascertain the factum of the eligibility. The point of time when it is ascertained is unimportant. The prescription of a rigid time limit for the proof of the entitlement in the very nature of things is demeaning to the object of the Scheme. We are, therefore, of the view that neither the date of the application nor the date on which the required proof is furnished should make any difference to the entitlement of the benefit under the Scheme. Hence, once the application is made, even if it is unaccompanied by the requisite eligibility data, the date on which it is made should be accepted as the date of the preferment of the claim whatever the date on which the proof of eligibility is furnished.

That leaves us with the question as to whether, notwithstanding the Date on which the application itself is made, the claimant should be entitled to the benefit of the pension with effect from an earlier date. In support of the contention that the benefit should be made available with retrospective effect, reliance is placed on the two cases cited earlier where the benefit is given with effect from 1st August, 1980. We have given our anxious consideration to the question and are of the view that for reasons more than one, the benefit should flow only from the date of the application and not from any date earlier. As pointed out before in the two earlier cases the question with regard to the retrospectivity of the benefit was neither raised nor answered. We have, therefore, to decide it for the first time. There is no doubt that if the object of the Scheme is to benefit the freedom fighters, theoretically, they should be entitled to the benefit from the date the Scheme came into operation. But the history, the true spirit and the object of the Scheme would itself probably not support such straight-jacket formula. As has been pointed out above, the Scheme was introduced in 1972 on the occasion of the Silver Jubilee of our National Independence. It is not suggested that some of the freedom fighters were not in need of financial assistance prior to that date. When the Scheme came into force for the first time, it was also restricted to those who were in need of such assistance and hence only such freedom fighters were given its benefit, whose annual income did not exceed Rs.5,000/-. It is only later, i.e., from 1st August, 1980, that the benefit was extended to all irrespective of their income. The object in making the said relaxation was not to reward or compensate the sacrifices made in the freedom struggle. The object was to honour and where it was necessary, also to mitigate the sufferings of those who had given their all for the country in the hour of its need. In fact, many of those who do not have sufficient income to maintain themselves refuse to take benefit of it, since they consider it as an affront to the sense of patriotism with which they plunged in the Freedom Struggle. The spirit of the Scheme being both to assist and honour the needy and acknowledge the valuable sacrifices made, it would be contrary to its spirit to convert it into some kind of a programme of compensation. Yet that may be the result if the benefit is directed to be given retrospectively whatever the date the application is made. The Scheme should retain its high obje4ctive with which it was motivated. It should not further be forgotten that now its benefit is made available irrespective of the income limit. Secondly, and this is equally important to note, since we are by this decision making the benefit of the scheme available irrespective of the date on which the application is made, it would not be advisable to extend the benefit retrospectively. Lastly, the pension under the present Scheme is not the only benefit made available to the freedom fighters or their dependants. The preference in employment, allotment of accommodation and in admission to schools and colleges to their kith and kin etc. are also the other benefits, which have been made available to them for quite sometime now.

Hence we are of the view that the pension under the Scheme should be made payable only from the date on which the application is made whether the application is accompanied by the necessary proof of eligibility or not. The pension should, of course, be sanctioned only after the required proof is produced.

We decline to go into the facts of the individual petitioners in this petition and direct the respondents as follows:-

(a) The respondents should accept the applications of the petitioners irrespective of the date on which they are made. The applications received hereafter should also be entertained without raising the plea that they are beyond the prescribed date.

(b) The respondents should scrutinize every application and the evidence produced in support of the claim and dispose it of as expeditiously as possible and in any case within three months of the receipt of the application, keeping in view the laudable and sacrosanct object of the Scheme.

(c) The pension should be paid to the applicant from the date on which the original application is received whether the application is filed with or without the requisite evidence. The sanction of the pension would, however, be subject to the requisite proof in support of the claim.

8. In the light of the decision referred to in para-6 of the counter-affidavit, in *the Union of India and others v. Ram Jeevan Singh and others* by judgment dated 14-11-1994 the petitions for Special Leave to Appeal (Civil No./94 CC 27667) from the judgment and order dated 10-12-1993 of the High Court of Patna in C.JC No. 7123/93 and also in the light of the decision referred to supra in *Mukund Lal Bhandari v. Union of India (1st supra),* this Court is of the considered opinion that, in the light of the views expressed by the Apex Court, the grant made sanctioning the pension with effect from 25-03-2004 in the peculiar facts and circumstances may not be just and proper. However, in the light of the facts and circumstances, especially in the light of the views expressed by the Apex Court as specified supra, this Court is of the considered opinion that instead of granting any positive directions in this regard, since the question to be decided is whether the pension can be granted from the date of the Scheme or from the date of at least the filing of the W.P. No. 1740 of 1995, let the petitioner make a representation to the respondent narrating all the facts and circumstances within a period of four weeks from today and let the respondent consider and dispose of the said representation in the light of the decisions referred to supra within a period of eight weeks thereafter.

9. The writ petition is disposed of accordingly. No order as to costs.

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P.S. NARAYANA, J

Dated: -09-2007

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[1] JT 1993 (3) S.C. 342